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中国境内企业境外间接上市

外汇监管问题研究

**Study on Foreign Exchange Supervision on Indirect
Overseas Listing of Enterprises in China**

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内 容 摘 要

本文以我国境内企业境外间接上市的外汇监管问题为研究中心,主要采用了分类、比较和归纳的研究方法,分别从境外投资和返程投资的角度对境外间接上市的外汇监管问题进行探析。全文共分四个部分。

第一部分首先对境外间接上市的基本问题作一概述,点出对境外间接上市法律监管的必要性,并进而引出研究境外间接上市的外汇监管问题意义所在。最后,通过剖析我国间接上市外汇监管的法律制度,进一步将该监管问题划分为对境外投资的外汇监管和对返程投资的外汇监管两个部分,为下文的深入论述进行铺垫。

第二部分专门论述了境外间接上市的境外投资外汇监管问题。本部分首先回顾了我国对外投资外汇监管法律制度的历史演变,进而通过与 2005 年以来国家外管局的监管新规进行对比,重点分析了外管局 75 号文对境外投资设立 SPV 的外汇管制。由此,我国正式进入了对境外间接上市所涉境外投资实施有序外汇监管的新阶段。

第三部分专门论述了境外间接上市的返程投资外汇监管问题。首先介绍了返程投资的基本概念,并与过渡性资本外逃进行了区分;接着又从加强外商投资管理和明确对返程投资进行外汇监管这两个阶段研究了我国对返程投资外汇监管制度的历史演进;最后重点剖析了 10 号文出台后对境外间接上市返程投资外汇监管的新思路。

第四部分通过总结前文,指出我国的外汇监管立法应兼顾安全和效率的价值理念,并分别从境外投资和返程投资的监管角度对完善境外间接上市的外汇监管提出建议。

关 键 字: 间接上市; 外汇监管; 返程投资

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ABSTRACT

This thesis focuses on the foreign exchange supervision on indirect overseas listing of enterprises in China. Research methods, such as classification, comparison and induction are employed to analyze the foreign exchange supervision on indirect overseas listing from perspectives of overseas investment and round-tripping investment. The whole thesis is divided into four chapters.

In chapter one, after giving a brief introduction of basic problems of indirect overseas listing, the writer points out the necessity of legal supervision on indirect overseas listing and the significance of the study of it. Through analyzing the legal system of Chinese foreign exchange supervision on indirect overseas listing, it can be concluded that the supervision can be divided into the foreign exchange supervision on overseas investment and the foreign exchange supervision on round-tripping investment. Chapter one is the preparing part of this thesis.

Chapter two focuses on the foreign exchange supervision on indirect overseas listing investment. At first, the historical evolution of China's legal system of foreign exchange supervision on overseas investment is reviewed. Compared with the new supervision regulations enacted by SAFE since 2005, the foreign exchange controls of overseas investment on SPV basing on Document NO. 75 released by SAFE is analyzed in a detailed way. From then on, China officially entered into the new stage in which orderly foreign exchange supervision system is carried out on the area of indirect overseas listing investment.

In chapter three, the foreign exchange supervision on indirect round-tripping listing investment is discussed. Firstly, the basic concept of round-tripping investment is introduced and distinguished with transitional capital flight. Then, China's historical evolution of foreign exchange supervision on round-tripping investment system is elaborated from the perspective of strengthening the management of foreign investment and the viewpoint of foreign exchange supervision on round-tripping investment respectively. Finally, the new thinking mode which adopted after Document NO.10 released is discussed in a detailed way. It is the thinking mode for foreign exchange supervision on indirect overseas listing round-tripping investment.

Based on the above discussions,the writer points out that the values of security as well as efficiency should be considered when enacting China's legislation of foreign exchange supervision. Finally, the writer proposes his suggestions on foreign exchange supervision on indirect overseas listing from angles of supervision on overseas investment and round-tripping investment respectively.

Key Words: Indirect listing; Foreign Exchange Supervision; Round-tripping Investment

缩略语表 Abbreviations

BVI	British Virgin Island 英属维尔京群岛
FDI	Foreign Direct Investment 外商直接投资
GATT	General Agreement on Tariff and Trade 关税与贸易总协定
IPO	Initial Public Offering 首次公开发行
IMF	International Monetary Fund 国际货币基金组织
OTCBB	Over the Count Bulletin Board 场外证券交易行情招示板
SPV	Special Purpose Vehicle 特殊目的公司
WTO	World Trade Organization 世界贸易组织

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